

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 121

**Introduced by Assembly ~~Member Simitian~~ Members *Simitian,
Nakano, and Laird***

January 15, 2003

An act to add Division 38 (commencing with Section 72400) to the Public Resources Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

AB 121, as amended, Simitian. Large passenger vessels: water quality.

Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (*board*) is the principal state agency with primary authority over water quality matters. Under the act, the board prescribes waste discharge requirements for the discharge of waste into the waters of the state.

Existing law, which by its own terms will be repealed on July 1, 2003, requires an owner or operator of a large passenger vessel operated in the marine waters of the state to submit a report to the ~~State Water Resources Control Board~~ *board* of any release of graywater or sewage that occurred during a specified time in the marine waters of the state. *Existing law, which by its own terms will be repealed January 1, 2004, generally requires a master, operator, or person in charge of a vessel to undertake specified ballast water management and reporting practices.*

Federal law prohibits a state from prohibiting vessels from discharging sewage ~~or graywater~~, unless the state applies to, and receives approval from, the United States Environmental Protection

Agency. *Federal law establishes a system of national marine sanctuaries.*

This bill would require an owner or operator of a large passenger vessel, as defined, not later than 10 days from the close of a calendar quarter in which the vessel has operated in the marine waters of the state, to submit to the board a report itemizing the offloading or release of waste material, *defined as sewage, oily bilgewater, or ballast water*, from that vessel that occurred during the previous calendar quarter while the vessel was located in the marine waters of the state. The bill would require the owner or operator of a large passenger vessel, for the time during any calendar quarter in which that vessel is operated in the marine waters of the state, to record, or cause to be recorded, information required for the preparation of the report. The bill would exempt from these requirements vessels that operate in the marine waters of the state solely in innocent passage. The bill would define various *related* terms.

The bill would direct the board to apply to the Administrator of the United States Environmental Protection Agency *and any other required federal agencies* to authorize the state to prohibit the ~~discharge~~ *release* of ~~both sewage and graywater~~ by large passenger vessels ~~operating in~~ *into either the marine waters of the state or national marine sanctuaries in the marine waters of the state*. The bill would prohibit ~~those discharges~~ *the release of sewage by large passenger vessels into those waters if the administrator approves and any other required federal agencies approve the applications, would prohibit the release of oily bilgewater or ballast water, by large passenger vessels into those waters, and would subject a person who violates the prohibitions to a civil penalty, as specified.* ~~The~~

The bill would require the board to request the United States Environmental Protection Agency and any other required agencies to declare those areas outside of the marine waters of the state that flow into the marine sanctuaries to be no discharge zones for sewage, oily bilgewater, and ballast water. The bill would authorize the board to board and inspect a vessel in the marine waters of the state for the purposes of carrying out the bill's provisions. The bill would authorize the board to adopt regulations to carry out the bill's provisions.

~~The bill would provide that its provisions are severable.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 38 (commencing with Section 72400) is added to the Public Resources Code, to read:

DIVISION 38. LARGE PASSENGER VESSELS

CHAPTER 1. DEFINITIONS

72400. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this division.

(b) “Board” means the State Water Resources Control Board.

(c) “Calendar quarter” or “quarter” means the three month periods ending March 30, June 30, September 30, and December 31.

~~(d) “Graywater” means galley, bath, and shower waters.~~

~~(e) “Hazardous waste” means “hazardous waste,” as defined in Section 25117 of the Health and Safety Code.~~

~~(f)–~~

(d) “Large passenger vessel” or “vessel” means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

~~(g)–~~

(e) “Marine waters of the state” means “coastal waters” as defined in Section 13181 of the Water Code.

~~(h) “Medical waste” means medical waste subject to regulation pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.~~

~~(i)–~~

(f) “Marine sanctuaries” means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary.

(g) “Offloading” means the removal of waste material onto or into a controlled storage, processing, or disposal facility or treatment works.

~~(j)–~~

(h) “Oil” has the meaning set forth in Section 8750.

~~(k)–~~

(i) “*Oily bilgewater*” includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(j) “Operator” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

~~(l)–~~

(k) “Owner” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

~~(m) “Release” means spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing of waste material into the environment, including the abandonment or discarding of bags, containers, and other receptacles containing waste material, and without regard to whether the waste material left the vessel through a discrete conveyance or nonpoint source.~~

~~(n)–~~

(l) “Release” means discharging or disposing of wastes into the environment.

(m) “Sewage” has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, and also includes material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

~~(o) “Solid waste” has the meaning set forth in Section 40191.~~

~~(p) “Waste material” means biological materials, chemical wastes, graywater, hazardous substances, hazardous waste, industrial waste, incinerator residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge, solid wastes, toxic wastes, and wrecked or discarded equipment, but does not include ballast water, consumer products in consumer use, or, with respect to offloading, products that remain capable of being put to the beneficial use for which they were intended.~~

~~72401.—~~

(n) “Waste material” means sewage, oily bilgewater, or ballast water.

CHAPTER 2. REPORTS

72405. (a) An owner or operator of a large passenger vessel shall record, or cause to be recorded, information required for the preparation of the report pursuant to Section ~~72403~~ 72409, for the time during any calendar quarter in which that vessel is operated in the marine waters of the state.

(b) The board may adopt regulations directing owners or operators of large passenger vessels to quantify and qualify the releases of waterborne waste material from their vessels into the marine waters of the state.

~~72402.—~~

72407. An owner or operator subject to Section ~~72401~~ 72405 shall maintain the information collected pursuant to that section for three years from the date on which the information was collected.

~~72403.—~~

72409. (a) (1) Not later than 10 days from the close of a calendar quarter in which the owner or operator of a large passenger vessel has operated, or caused to be operated, the vessel in the marine waters of the state, the owner or operator shall submit to the board a report itemizing, among other matters, the offloading or release of waste material from that vessel that occurred during the previous calendar quarter while the vessel was located in the marine waters of the state.

(2) The owner or operator shall include in the report the information required by this section. In the preparation of the report the owner or operator may refer to and include copies of other state or federal reports that require identical information.

(3) The board shall implement the reporting requirements in this section in a manner that is designed to coordinate those requirements with other reporting requirements that may be applicable to the same vessel.

(b) For each release of a waste material the report shall include a description of all of the following:

- (1) Location of the release, including latitude and longitude.
- (2) Date and time of the release.

1 (3) Volume or weight, *and* type, and source of the waste
2 material released.

3 (4) Processing or treatment used on the waste material prior to
4 release.

5 (5) The circumstances surrounding and cause of the release,
6 including a statement as to whether the release was intentional or
7 accidental.

8 (6) Environmental damage caused by the release, to the extent
9 that the damage can be reasonably identified.

10 (7) Remedial efforts taken to prevent accidental releases.

11 (c) For sewage, if released into the marine waters of the state,
12 the report shall describe the results of regular samples of the
13 sewage collected immediately prior to discharge from the onboard
14 sewage treatment works, which should test for fecal coliform,
15 biological oxygen demand (BOD), and total suspended solids
16 (TSS).

17 ~~(d) For graywater and other wastewater, other than sewage,~~
18 ~~released into the marine waters of the state, the report shall~~
19 ~~describe the results of regular samples of the graywater collected~~
20 ~~immediately prior to discharge, which should test for pH, oil and~~
21 ~~grease, total dissolved and suspended solids, ammonia nitrogen,~~
22 ~~phosphate, and metals.~~

23 ~~(e)~~
24 (d) For waste material that was offloaded onto or into the state,
25 ~~except as provided in subdivision (f),~~ the report shall include a
26 description of all of the following:

27 (1) Location of offloading.

28 (2) Date of offloading.

29 (3) Volume or weight, *and* type, and source of the offloaded
30 material.

31 (4) Ultimate destination of the offloaded material.

32 (5) Treatment or processing received by the material prior to,
33 or during, offloading.

34 ~~(f) For hazardous waste subject to Subchapter III (commencing~~
35 ~~with Section 6921) of Chapter 82 of Title 42 of the United States~~
36 ~~Code, the report may include a copy of the manifest prepared in~~
37 ~~accordance with that chapter instead of the information required~~
38 ~~by subdivision (e). If hazardous waste was offloaded without a~~
39 ~~manifest, the report shall include the information required by~~

1 ~~subdivision (e) and an explanation as to why the hazardous waste~~
2 ~~was offloaded without a manifest.~~

3 ~~(g) For graywater, sewage, and other wastewater~~

4 ~~(e) For sewage, oily bilgewater, or ballast water~~ that was
5 offloaded onto or into the state, the report shall state whether those
6 waters were mixed with one another or with any waste material
7 prior to, or during, offloading.

8 ~~(h)–~~

9 (f) To the extent permitted by federal law, the board, by
10 regulation, may require an owner or operator to submit
11 supplemental or additional information concerning the releases or
12 offloading of waste material and the types and quantities of fuels
13 and other materials combusted by large passenger vessels while
14 they are in the marine waters of the state.

15 ~~(i)–~~

16 (g) If requested by the board, the report shall also be submitted
17 in electronic format.

18 ~~(j)–~~

19 (h) Nothing in this section relieves an owner or operator from
20 other reporting requirements imposed pursuant to other state or
21 federal law.

22 ~~72404.—~~

23
24 CHAPTER 3. PROHIBITED RELEASES

25
26 72415. (a) The Legislature finds and declares that the
27 protection and enhancement of the quality of marine waters of the
28 state requires that the ~~discharge release~~ of untreated and treated
29 sewage from large passenger vessels into the marine waters of the
30 state should be prohibited.

31 (b) The board shall apply to the Administrator of the United
32 States Environmental Protection Agency, pursuant to subsection
33 (f) of Section 1322 of Title 33 of the United States Code and
34 Section 140.4 of Title 40 of the Code of Federal Regulations, *and*
35 *any other required federal agencies, as determined by the board,*
36 to authorize the state to prohibit the ~~discharge release~~ of untreated
37 and treated sewage from large passenger vessels into the marine
38 waters of the state.

39 (c) The board shall conduct any research necessary to make this
40 application.

1 ~~72405.—~~

2 72417. If the Administrator of the United States
3 Environmental Protection Agency ~~approves, and any other~~
4 ~~required federal agencies, approve~~ an application made pursuant
5 to subdivision (b) of Section ~~72404~~ 72415, an owner or operator
6 of a large passenger vessel may not ~~discharge, or permit anyone to~~
7 ~~discharge~~ release, or permit anyone to release, any sewage,
8 untreated or treated, from the vessel into the marine waters of the
9 state.

10 ~~72406.—~~

11 72419. (a) The Legislature finds and declares that the
12 protection and enhancement of the quality of the marine waters of
13 the state requires that the ~~discharge of graywater~~ release of oily
14 bilgewater from large passenger vessels into the marine waters of
15 the state should be prohibited.

16 ~~(b) The board shall apply to the Administrator of the United~~
17 ~~States Environmental Protection Agency, pursuant to paragraph~~
18 ~~(7) of subsection (n) of Section 1322 of Title 33 of the United~~
19 ~~States Code and Section 1700.9 of Title 40 of the Code of Federal~~
20 ~~Regulations, to authorize the state to prohibit the discharge of~~
21 ~~graywater into the marine waters of the state.~~

22 ~~(c) The board shall conduct any research necessary to make this~~
23 ~~application.~~

24 ~~72407. If the Administrator of the United States~~
25 ~~Environmental Protection Agency approves an application made~~
26 ~~pursuant to subdivision (b) of Section 72406, an owner or operator~~

27 ~~(b) An owner or operator of a large passenger vessel may not~~
28 ~~discharge, or permit anyone to discharge, any graywater~~ release,
29 or permit anyone to release, any oily bilgewater from the vessel
30 into the marine waters of the state.

31 ~~72408.—~~

32 72421. (a) The Legislature finds and declares that the
33 protection and enhancement of the quality of marine waters of the
34 state requires that the release of ballast water from large passenger
35 vessels into the marine waters of the state should be prohibited.

36 ~~(b) An owner or operator of a large passenger vessel may not~~
37 ~~release, or permit anyone to release, ballast water from the vessel~~
38 ~~into the marine waters of the state.~~

39 72423. (a) The Legislature finds and declares that the
40 protection and enhancement of the quality of marine sanctuaries

1 *requires that the release of untreated and treated sewage from*
2 *large passenger vessels into marine sanctuaries should be*
3 *prohibited.*

4 *(b) The board shall apply to the Administrator of the United*
5 *States Environmental Protection Agency, pursuant to subsection*
6 *(f) of Section 1322 of Title 33 of the United States Code and Section*
7 *140.4 of Title 40 of the Code of Federal Regulations, and any other*
8 *required federal agencies, as determined by the board, to authorize*
9 *the state to prohibit the release of untreated and treated sewage*
10 *from large passenger vessels into marine sanctuaries.*

11 *(c) The board shall conduct the research necessary to make this*
12 *application.*

13 *72425. If the Administrator of the United States*
14 *Environmental Protection Agency, and any other required federal*
15 *agencies, approve an application made pursuant to subdivision (b)*
16 *of Section 72423, an owner or operator of a large passenger vessel*
17 *may not release, or permit anyone to release, sewage, untreated or*
18 *treated, from the vessel into marine sanctuaries.*

19 *72427. (a) The Legislature finds and declares that the*
20 *protection and enhancement of the quality of marine sanctuaries*
21 *requires that the release of oily bilgewater from large passenger*
22 *vessels into marine sanctuaries should be prohibited.*

23 *(b) An owner or operator of a large passenger vessel may not*
24 *release, or permit anyone to release, oily bilgewater from the*
25 *vessel into marine sanctuaries.*

26 *72429. (a) The Legislature finds and declares that the*
27 *protection and enhancement of the quality of marine sanctuaries*
28 *requires that the release of ballast water from large passenger*
29 *vessels into marine sanctuaries should be prohibited.*

30 *(b) An owner or operator of a large passenger vessel may not*
31 *release, or permit anyone to release, ballast water from the vessel*
32 *into marine sanctuaries.*

33
34 *CHAPTER 4. PENALTIES*
35

36 *72430. (a) A person who violates Section 72417, 72419,*
37 *72421, 72425, 72427, or 72429 is subject to a civil penalty of not*
38 *more than twenty-five thousand dollars (\$25,000) for each*
39 *violation.*

1 ***(b) The civil penalty imposed for each separate violation***
2 ***pursuant to this section is separate from, and in addition to, any***
3 ***other civil penalty imposed for a separate violation pursuant to***
4 ***this section or any other provision of law.***

5 ***(c) In determining the amount of a civil penalty imposed***
6 ***pursuant to this section, the court shall take into consideration all***
7 ***relevant circumstances, including, but not limited to, the nature,***
8 ***circumstance, extent, and gravity of the violation. In making this***
9 ***determination, the court shall consider the degree of toxicity and***
10 ***volume of the release, the extent of harm caused by the violation,***
11 ***whether the effects of the violation may be reversed or mitigated,***
12 ***and with respect to the defendant, the ability to pay, the effect of***
13 ***a civil penalty on the ability to continue in business, all voluntary***
14 ***cleanup efforts undertaken, the prior history of violations, the***
15 ***gravity of the behavior, the economic benefit, if any, resulting from***
16 ***the violation, and all other matters the court determines justice***
17 ***may require.***

18 ***(d) A civil action brought under this section may only be***
19 ***brought in accordance with this subdivision. That civil action may***
20 ***be brought by the Attorney General upon complaint by the***
21 ***Department of Fish and Game or the appropriate California***
22 ***regional water quality control board. If a district attorney or city***
23 ***attorney brings an action under this section, the action shall be in***
24 ***the name of the people of the State of California. An action relating***
25 ***to the same violation may be joined or consolidated.***

26
27 **CHAPTER 6. MISCELLANEOUS**
28

29 ***72440. The board shall request the United States***
30 ***Environmental Protection Agency, and any other required***
31 ***agencies, as determined by the board, to declare those areas***
32 ***outside of the marine waters of the state that flows into the marine***
33 ***sanctuaries to be no discharge zones for sewage, oily bilgewater,***
34 ***and ballast water.***

35 ***72442. The board may board and inspect a vessel in the***
36 ***marine waters of the state for the purposes of carrying out this***
37 ***division.***

38 ***72409.—***

1 72444. (a) This division does not apply to a large passenger
2 vessel that operates in the marine waters of the state solely in
3 innocent passage.

4 (b) For the purposes of this section, a vessel is engaged in
5 innocent passage if its operation in state waters would constitute
6 innocent passage under either the Convention on the Territorial
7 Sea and Contiguous Zone, dated April 29, 1958, or the United
8 Nations Convention on the Law of the Sea, dated December 10,
9 1982.

10 ~~72410.—~~

11 72446. The board may adopt regulations to carry out this
12 division.

13 ~~SEC. 2.—The provisions of this division are severable. If any~~
14 ~~provision of this division or its application is held invalid, that~~
15 ~~invalidity shall not affect other provisions or applications that can~~
16 ~~be given effect without the invalid provision or application.~~

